IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.14 OF 2002

IN

MISC.PETITION NO.41 OF 2001

...

SICOM Ltd. ...Appellant

v/s.

Parca Paper Industries Ltd.
and another ...Respondents

...

Mr.Kevic Setalvad with Mr.V.P.Vaze for the Appellant.

Mr.S.N.Shah with Mr.G.R.Mehta for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 18TH OCTOBER, 2007

P.C.:

1. We have heard the learned Counsel for both sides. In our opinion, the learned single Judge in view of the observations of the Supreme Court in paragraph 121 of the judgment of the Supreme Court in the case of Shah Babulal Khimji v/s. Jayaben D.Kania and anr, AIR 1981 SC 1786 committed an error in deciding the issue of court fees without issuing notice to the State Government.

2. The learned counsel appearing for the Appellant submits that because the issue of court fees was taken up, their application for enforcement of security was not taken up for hearing. He also states that the SICOM will be willing to pay the court fees, in case, the learned single Judge so holds after issuing notice to the State Government, subject to their rights to challenge the order of the

learned single Judge.

3. Taking overall view of the matter, therefore, in our opinion, following order would meet the ends of justice:-

(i) The order of the learned single Judge is set aside.

(ii) Within a period of two weeks from today, the Appellant shall file an undertaking before the learned single Judge that if at the final disposal of the application the learned single Judge holds that the court fees as per the Article 7 Schedule 1 of the Court Fees Act is payable, the SICOM will pay the necessary amount of court fees subject to their rights to challenge the decision of the learned single Judge.

(iii) The learned single Judge is requested to decide the issue of court fees at the final disposal of the application filed by the Appellant. The learned single Judge shall issue notice to the State Government about the objection raised by the Respondent in relation to the court fees, and the

learned single Judge shall decide the question under what Article the court fees is payable after notice to the State Government and while deciding the main application itself.

(iv) While deciding the issue of court fees, the learned single Judge shall decide it on the basis of the material produced before him and while deciding that issue the learned single Judge shall not consider the order which is impugned in the Appeal or this order. In other words, the issue of court fees shall be decided on its own merits on the basis of the material produced before the learned single Judge.

(v) In view of the fact that the proceedings have remained pending since 2001 and as the public finances are involved, we request the learned single Judge to decide the application as expeditiously as possible, preferably within a period of six months from today.

(vi) Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)